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**MAR 01 2006**

In re Application of  
Spencer et al.  
Application No. 10/629,401  
Filed: July 28, 2003  
Attorney Docket No. TRIRG-01004US1

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**OFFICE OF PETITIONS**  
  
Decision on Petition

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 25, 2005, to accept the unintentionally delayed priority claim set forth in the concurrently filed amendment.

The petition is **granted**.

When an application is filed on or after November 29, 2000, benefit claims under 35 USC 119(e) must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. For the instant application, the above period of time ended on November 28, 2003. The priority claim at issue was not made by that date. However, petitioner has submitted a petition under 37 CFR 1.78(a)(6) which allows one to make late priority claims under 35 USC 119(e) if certain criteria are satisfied.

Per 37 CFR 1.78(a)(6), a petition to accept an unintentionally delayed claim under 35 USC 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

- (1) The reference required by 37 CFR 1.78(a)(5), unless previously submitted;
- (2) The surcharge set forth in § 1.17(t); and
- (3) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner has satisfied the requirements listed above.

The granting of this petition is not a determination that petitioner is actually entitled to the benefit of the filing date of the prior-filed provisional application, but is only a determination that the Office will allow petitioner to file an untimely claim for priority. The examiner will, in due course, consider any priority claim and determine the extent to which the application is entitled to an earlier filing date.

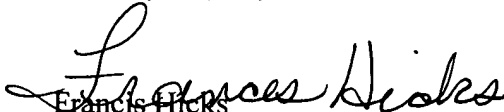
A corrected Filing Receipt, which includes the priority claim, accompanies this decision on petition.

The address of record is currently the address associated with customer number 28554 listed at the top of this decision. The Office notes the address on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed.

Technology Center Art Unit 2128 will be informed of the instant decision so that appropriate action can be taken in response to the amendment submitted November 25, 2005, which includes the claim for priority. **The examiner will consider the priority claim and determine the**

**extent to which the application is entitled to an earlier filing date based on the prior-filed application.**

Telephone inquiries concerning this decision should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

  
Francis Hicks  
Petitions Examiner  
Office of Petitions

Attached: Corrected Filing Receipt